



[Billing Code: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to the premerger notification rules ("the Rules") to clarify how to determine if an entity is a United States or foreign person or issuer for purposes of determining reportability under the Hart Scott Rodino Act ("the Act" or "HSR").

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Invitation to Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "16 CFR Parts 801 and 803: Amendments to the Premerger Notification Rules, Matter No. P989316" on your comment. File your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary,

Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones (202-326-3100), Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Room CC-5301, Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “16 CFR Parts 801 and 803: Amendments to the Premerger Notification Rules, Matter No. P989316” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://www.regulations.gov> by following the instructions on the web-based form.

If you file your comment on paper, write “16 CFR Parts 801 and 803: Amendments to the Premerger Notification Rules, Matter No. P989316” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-

5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential," – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and

must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at <https://www.regulations.gov> – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, *see* <https://www.ftc.gov/site-information/privacy-policy>.

Overview

The Act and Rules require the parties to certain mergers and acquisitions to file notifications with the Federal Trade Commission (“the FTC” or “the Commission”) and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (“the Assistant Attorney General”) (collectively, “the Agencies”) and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable the Agencies to determine whether a

proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court in order to successfully enjoin anticompetitive mergers prior to consummation.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. In addition, Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

In this proposed rulemaking, the Commission proposes amending § 801.1(e)(1) of the Rules to define the term "principal offices" in order to provide clarity in determining whether an entity is a "U.S. person" and/or a "U.S. issuer." In addition, the Commission proposes amending § 801.1(e)(2) to simplify the definitions of "foreign person" and "foreign issuer" to include entities that are not "U.S. persons" or "U.S. issuers" under § 801.1(e)(1). The Commission also proposes eliminating the phrase "principal executive offices" from the § 803.5(a) notice requirement to avoid confusion with the proposed definition of "principal offices."

PART 801 - COVERAGE RULES

Section 801.1(e) Definitions.

A. Background

Whether an entity is a U.S. person or issuer or, instead, a foreign person or issuer determines the availability of two exemptions found in the Rules, §§ 802.50 and 802.51 (the "foreign exemptions"), which exclude certain foreign transactions from the Act's requirements. In general, acquisitions of foreign assets and voting securities of foreign issuers may be exempt from the HSR filing requirements when there is only a limited nexus with United States commerce. For instance, § 802.50(b) exempts certain acquisitions of foreign assets where both the acquiring and acquired persons are foreign persons and only have limited sales and assets in the United States. In addition, § 802.51 exempts certain acquisitions of voting securities of foreign issuers where the acquiring person is a U.S. person (§ 802.51(a)) or a foreign person (§ 802.51(b)), and the issuer has only limited sales and assets in the U.S., or both the acquiring and acquired persons are foreign persons with limited U.S. sales and assets (§ 802.51(c)).

As specified in the original Statement of Basis and Purpose published in 1978 ("1978 SBP"), the foreign exemptions were meant to exclude from the premerger notification requirements those transactions with "only a limited nexus with United States commerce." 43 FR 33450, 33497 (July 31, 1978), *see also id.* at 33498. Determining whether an entity is a U.S. or foreign person or issuer is often a necessary first step in analyzing whether the foreign exemptions may be available.

The definitions for a "United States person," "United States issuer," "foreign person," and "foreign issuer" are provided in § 801.1(e). Sections 801.1(e)(1)(i)(A) and (ii) articulate three tests to determine whether an entity is a U.S. person or a U.S. issuer,

and §§ 801.1(e)(2)(i)(A) and (ii) mirror these tests for a foreign person and foreign issuer. In both §§ 801.1(e)(1) and (2), the first test focuses on where the entity is incorporated, and this is unambiguous. The second, which asks under which laws the entity is organized, is also unambiguous. The third test focuses on the location of the entity's "principal offices." The Rules do not currently define this term, creating ambiguity when determining whether persons or issuers are U.S. or foreign.

The 1978 SBP, the only source of formal Commission guidance on the meaning of "principal offices," provided that the term should include "that single location which the person regards as the headquarters office of the ultimate parent entity. This location may or may not coincide with the location of its principal operations." 43 FR 33461. Despite this guidance from the 1978 SBP, the FTC's Premerger Notification Office ("PNO") and outside parties have found this third prong hard to define and difficult to apply to modern globalized businesses. The Commission now believes that "principal offices" should, in fact, relate to the location of an entity's principal operations. Thus, the Commission proposes clarifying the meaning of "principal offices" to more accurately reflect where an entity principally operates and, therefore, make the test in §§ 801.1(e)(1)(i)(A) easier to apply.

B. Principal Offices

Since the 1978 SBP was published, the number of multinational business organizations has increased. While the "single location" of the "principal offices" may have been a straightforward question of the entity's headquarters location at that time, today it is quite common for an entity to have multiple headquarters. This makes

determining the "single location" of the "principal offices" challenging. In response to questions from practitioners, the PNO's informal guidance has focused largely on the business location of officers as a proxy for the location of the "principal offices." This approach, however, still assumes that officers operate out of a single location. In today's modern globalized world, with capabilities to work from numerous locations, the 1978 SBP's emphasis on a "single location" is no longer appropriate.

The Commission recognizes the need to provide a clearer way to determine the location of an entity's principal offices. In undertaking this analysis, the Commission looks to the purpose of the foreign exemptions, which is to provide a mechanism for exempting transactions with a limited nexus with the United States. Despite the Commission's determination in 1978 that principal offices "may or may not coincide" with principal operations, in today's era of multinational organizations, the location where an entity conducts its principal operations is key to determining whether the entity is a U.S. person or issuer and whether the foreign exemptions should apply. Principal operations within the U.S. demonstrate sufficient ties to the U.S. to be considered a U.S., rather than foreign, person or issuer. The Commission proposes moving away from the 1978 SBP's construction of the term "principal offices," which focused solely on the headquarters location, and instead looking more broadly at where an entity's principal operations take place.

To accomplish this, the Commission proposes amending the Rules to provide that "principal offices" should be determined based on the location of the applicable ultimate parent entity's ("UPE," *see* § 801.1(a)(3) of the Rules) or issuer's executives or assets.

Specifically, the Commission proposes amending § 801.1(e)(1) to provide that the relevant entity has “principal offices” in the United States if (1) 50% or more of the officers reside in the U.S., or (2) 50% or more of the directors reside in the U.S., or (3) 50% or more of its assets (including assets of all entities it controls) are located in the U.S., based on a fair market value determination of the assets. Thus, filers will evaluate whether the relevant entity is incorporated in the U.S., or organized under the laws of the U.S., or has its "principal offices" located in the U.S., per the proposed amendments to § 801.1(e)(1), to determine whether the entity has a sufficient nexus to the U.S. to be a U.S. person and/or a U.S. issuer.

Proposed §§ 801.1(e)(1)(iii)(A) and 801.1(e)(1)(iii)(B) focus on where the officers or directors reside. "Officers" are individuals in positions that are either (1) provided for in the entity's articles of incorporation or by-laws, or (2) appointed by the board of directors. In determining whether an entity is a "U.S. person," the proposed rule looks to the officers and directors of the entity's ultimate parent. For a "U.S. issuer," the proposed rule looks to the officers and directors of the issuer itself. Whether within the UPE or issuer (which may be the same), these executives are charged with overall responsibility for the operation of the entity. In the Commission’s view, if half or more of these business executives reside in the U.S., that is a viable proxy for concluding that the entity is principally operating in the U.S. and should be considered a U.S. person and/or a U.S. issuer.

The Commission invites comments on whether clarification is needed on the question of how an individual’s residency is to be determined and, if so, what factors

should be used in that determination. Factors could include the location of an individual's primary residence, based on the individual's primary tax residence or the country where he or she resides for at least half of the calendar year; or the location of at least half of the total real property owned by the individual. As discussed below, non-corporate entities without officers and directors would analyze the residency of those "individuals exercising similar functions as officers and directors." Sometimes these individuals are based within third parties because a third-party entity serves as the equivalent of an office or director. In such cases, the residency analysis will focus on the locations where the third-party entities are incorporated and the laws under which they are organized. The analysis will not require looking through the third-party entities to analyze the specific individuals within the third-party entities serving as officers and directors for the non-corporate entity in question.

Although the test for a natural person in § 801.1(e)(1)(i)(B) considers citizenship as well as residency, the citizenship of officers and directors does not necessarily reflect whether an entity operates in the U.S. and consequently has "principal offices" in the U.S. For example, consider a corporation that is incorporated abroad where all of its assets are also located abroad. It has six officers (all of whom reside abroad), and three of these officers are U.S. citizens. Despite the U.S. citizenship of three of its officers, this corporation operates abroad and thus would not be a U.S. person or a U.S. issuer.

Secondly, proposed §§ 801.1(e)(1)(iii)(A) and 801.1(e)(1)(iii)(B) also consider an entity's assets to determine whether that entity is physically based in the U.S. For a "U.S. person," the assets prong of the test looks not only at the entity's UPE, but also at all

entities that the UPE controls, directly or indirectly. Likewise, for a "U.S. issuer," the test looks to all assets of the issuer and all entities it controls. The broader focus on the UPE or issuer (which may be the same) and all entities it controls, directly or indirectly, will capture holding companies and other organizational structures where the assets and operations are located within subsidiaries below the UPE or issuer. As with the location of business executives, the Commission believes that if 50% or more of the relevant entity's assets are located in the U.S., that fact is an adequate proxy to establish that the entity is principally operating in the U.S. and should be considered a U.S. person and/or a U.S. issuer.

In determining whether 50% or more of the UPE's or issuer's assets are located in the U.S., the proposed amendments rely on the fair market value of the relevant entity's assets, determined in accordance with § 801.10(c)(3) of the Rules. This includes both tangible and intangible assets. For example, if the entity's total assets have a fair market value of \$500 million, and \$250 million or more of that fair market value is attributable to U.S. assets, then 50% of the entity's assets are deemed to be in the United States and its principal offices are in the United States. Therefore, the entity is a U.S. person and/or a U.S. issuer.

For entities without officers or directors, the analysis under the proposed amendments would focus on individuals exercising similar functions as officers and directors. If, for example, a limited partnership is not organized under U.S. law and does not have officers and directors, it must look to individuals exercising similar functions for the partnership. Serving as the equivalent of an officer or director includes making

decisions regarding, and overseeing, the day-to-day affairs of the partnership. For example, those "exercising similar functions" for an investment fund partnership may include the general partner of the partnership, and/or any investment manager, if one exists. The general partner and investment manager need not be under common control, for HSR purposes, with the partnership for the "exercising similar functions" concept to apply. In applying the officers and directors prongs of the test, if the investment manager or general partner is a third-party entity (rather than an individual), then for purposes of determining "residency," the analysis will focus on the locations where the investment manager and general partner are incorporated and the laws under which they are organized.

For example, Investment Fund LP is not organized under U.S. law, does not have any officers and directors, and does not have 50% or more of its assets in the United States. For purposes of the officers and directors analysis, Investment Fund LP must focus on individuals or entities exercising similar functions as officers and directors. In this case, the entities that exercise similar functions as officers and directors for Investment Fund LP are its General Partner, as well as its Investment Manager, even though General Partner and Investment Manager are not under common HSR control with Investment Fund LP. In this instance, given the lack of HSR control, a viable proxy for determining Investment Fund LP's nexus to the U.S., for purposes of the officers and directors prongs of the proposed principal offices test, is whether the Investment Manager or General Partner is organized or incorporated under U.S. law. If General Partner is not incorporated in the U.S. or organized under U.S. law, but Investment Manager is

organized under U.S. law, Investment Fund LP would be operated out of the United States, making it a U.S. person.

The proposed definitions of "principal offices" in § 801.1(e)(1)(iii) retain the intent of the 1978 SBP to exempt transactions with a limited connection with U.S. commerce, while recognizing that the 1978 SBP's focus on a "single location," which may not be connected with principal operations, is no longer appropriate. An entity's principal operations are relevant to determining whether there is a connection with U.S. commerce, and the Commission proposes focusing on director and officer residency and the location of assets as proxies for these operations. This proposed rule will mean that all three tests for determining principal offices will be straightforward, and it should therefore be easier for an entity to evaluate whether it satisfies any of the prongs of § 801.1(e)(1)(i)(A) and (ii), and whether it is a U.S. person and/or a U.S. issuer or, instead, a foreign person and/or a foreign issuer under the proposed changes to § 801.1(e)(2) discussed below.

The proposed definitions of "principal offices" will benefit parties analyzing premerger notification requirements by reducing the ambiguity and uncertainty in the current Rules and making it easier to determine whether an entity is a U.S. person and/or U.S. issuer. The Agencies will also benefit by having Rules that more accurately identify and exclude from the filing requirements those transactions that have only a limited nexus with U.S. commerce, as intended by the 1978 SBP. The Commission does not anticipate that the proposed definitions will increase the burden on parties, because

identifying both where officers and directors reside, and whether half of an entity's assets are located in the U.S. or abroad, should not be overly complicated or onerous.

C. Foreign Person and Issuer

With the proposed amendments to the definitions of a U.S. person and a U.S. issuer in § 801.1(e)(1), the three-part test to determine whether an entity is a foreign person and/or a foreign issuer in § 801.1(e)(2) is no longer necessary. Any person or issuer that is not a U.S. person or a U.S. issuer is necessarily a foreign person or a foreign issuer. Therefore, the Commission proposes simplifying the definitions for "foreign person" and "foreign issuer" to reflect this approach.

The proposed amendment will benefit parties analyzing premerger notification requirements because it will simplify and clarify the analysis for determining whether an entity is a foreign person and/or a foreign issuer.

PART 803 – TRANSMITTAL RULES

Section 803.5 Affidavits Required.

A. Background

The purpose of the notice provision in § 803.5(a)(1) is to inform the acquired issuer or unincorporated entity, and its UPE, of the obligation to make a premerger notification filing under the Act. There are certain categories of transactions, captured by § 801.30 of the Rules, that do not necessarily involve an agreement between the acquiring and acquired persons. In such circumstances, the § 803.5(a)(1) notice requirement is necessary because the acquired issuer or unincorporated entity may not otherwise be aware of the transaction and any premerger notification obligations. *See* 43 FR 33497,

33510 (July 31, 1978). Section 803.5(a)(1) currently requires that the notice be received at the "principal executive offices" of the issuer or unincorporated entity whose voting securities or non-corporate interests are to be acquired. Given the use of "principal offices" in § 801.1(e)(1), the Commission proposes removing the phrase "principal executive offices" from § 803.5(a)(1). This will benefit filing parties by avoiding confusion. Section 803.5(a)(1) specifies to whom notice must be sent.

Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(5).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small entities, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to invoke an HSR filing, the premerger notification rules rarely, if ever, affect small entities.¹ The 2000 amendments to the Act exempted all transactions valued at \$50 million or less, with subsequent automatic adjustments to take account of changes in Gross National Product resulting in a current threshold of \$84.4 million. Further, none of the proposed

¹ See 13 CFR part 121 (regulations defining small business size).

amendments expands the coverage of the premerger notification rules in a way that would affect small entities. Accordingly, the Commission certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

As noted above, the proposed amendments should make it easier for entities to evaluate whether a given transaction will qualify for the foreign exemptions to reporting obligations under the HSR Act. As such, Commission staff believes that the proposed amendments will not increase, and may even reduce, PRA burden.

List of Subjects in 16 CFR Parts 801 and 803

Antitrust.

For the reasons stated in the preamble, the Federal Trade Commission proposes to amend 16 CFR parts 801 and 803 as set forth below:

PART 801 – COVERAGE RULES

1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend § 801.1 by revising paragraph (e) to read as follows:

§801.1 Definitions

* * * * *

(e)(1)(i) *United States person*. The term *United States person* means a person the ultimate parent entity of which—

(A) Is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States; or

(B) If a natural person, either is a citizen of the United States or resides in the United States.

(ii) *United States issuer*. The term *United States issuer* means an issuer which is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States.

(iii) *Principal offices*. Principal offices are within the United States—

(A) For purposes of paragraph (e)(1)(i)(A) of this section, if 50% or more of the ultimate parent entity's officers reside in the United States; or 50% or more of the ultimate parent entity's directors reside in the United States; or 50% or more of the ultimate parent entity's assets (including the assets of all entities that the ultimate parent entity controls directly or indirectly), based on a fair market value that is determined in accordance with §801.10(c), are located within the United States. In the case of an entity lacking officers and directors, the analysis is based on individuals exercising similar functions.

(B) For purposes of paragraph (e)(1)(ii) of this section, if 50% or more of the issuer's officers reside in the United States; or 50% or more of the issuer's directors reside in the United States; or 50% or more of the issuer's assets (including the assets of all entities that the issuer controls directly or indirectly), based on a fair market value that is determined in accordance with §801.10(c), are located within the United States. In the case of an entity lacking officers and directors, the analysis is based on individuals exercising similar functions.

Example 1 to paragraph (e)(1). X Corporation, the ultimate parent entity, is not incorporated in the U.S. or organized under U.S. law. The members of its Board of Directors do not reside in the U.S. Of its "officers" – the individuals in positions that are either (a) provided for in the entity's articles of incorporation or by-laws, or (b) appointed by the board of directors – 5 reside in the U.S. and 5 do not reside in the U.S. X Corporation is a U.S. person because 50% of its officers reside in the U.S.

Example 2 to paragraph (e)(1). Fund LP is not incorporated in the U.S. nor organized under U.S. law and does not have officers or directors. Fund LP has a General Partner and Investment Manager, both of which exercise similar functions as officers for Fund LP. Neither the General Partner nor Investment Manager are individuals, but are third-party entities. Because the individuals exercising similar functions as officers and directors are based within third-party entities, the residency analysis will focus on the locations where these third-party entities are incorporated and the laws under which they are organized. The analysis will not require looking through the Investment Manager LP and General Partner to analyze the specific individuals within these third-party entities serving as officers and directors for Fund LP. The General Partner of Fund LP is a corporation that is not incorporated in the U.S. or organized under U.S. law. Fund LP's investment decisions are made by Investment Manager LP, pursuant to an investment management agreement. Investment Manager LP is organized under U.S. law, and therefore Fund LP is operated out of the U.S. and a United States person.

Example 3 to paragraph (e)(1). X Corporation, the ultimate parent entity, is not incorporated in the U.S. or organized under U.S. law. Four of the seven members of its

Board of Directors reside outside of the U.S., and seven of the ten officers of X Corporation reside outside of the U.S. X Corporation and its directly and indirectly controlled subsidiaries have assets, including offices, manufacturing facilities, and intellectual property, among others, both in the U.S. and outside of the U.S. Based upon a fair market valuation, X Corporation determines that 75% of its total assets are in the U.S. X Corporation is therefore a U.S. person.

(2)(i) *Foreign person*. The term *foreign person* means a person the ultimate parent entity of which is not a United States person under paragraph (e)(1)(i) of this section.

(ii) *Foreign issuer*. The term *foreign issuer* means an issuer which is not a United States issuer under paragraph (e)(1)(ii) of this section.

* * * * *

PART 803 – TRANSMITTAL RULES

3. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

4. Amend §803.5 by revising paragraph (a)(1) introductory text to read as follows:

§803.5 Affidavits Required

(a)(1) *Section 801.30 acquisitions*. For acquisitions to which § 801.30 applies, the notification required by the Act from each acquiring person shall contain an affidavit, attached to the front of the notification, or with the DVD submission, attesting that the issuer or unincorporated entity whose voting securities or non-corporate interests are to be acquired has received written notice delivered to an officer (or a person exercising

similar functions in the case of an entity without officers) by email or by certified or registered mail, wire, or hand delivery, of:

* * * * *

By direction of the Commission.

April Tabor,

Acting Secretary.

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